

STATE OF MICHIGAN
COURT OF APPEALS

LOUIS HASS,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 18, 2006

No. 258607

Wayne Circuit Court

LC No. 03-331533-CD

Before: White, P.J., Whitbeck, C.J., and Davis, J.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action alleging constructive discharge and age discrimination in violation of the Michigan Civil Rights Act, MCL 37.2201 *et seq.* We affirm.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*, 120.

To establish a prima facie case of age discrimination, plaintiff must prove that he was a member of a protected class, that he suffered an adverse employment action, that he was qualified for the position, and that he was discharged under circumstances that give rise to an inference of unlawful discrimination. *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 538 n 8; 620 NW2d 836 (2001), citing *Lytle v Malady*, 458 Mich 153, 172-173, 177; 579 NW2d 906 (1998). Such circumstances may include a showing that plaintiff was qualified for the position and replaced by a younger person, but there are no specific constraints on how the last element must be established. *Hazle v Ford Motor Co*, 464 Mich 456, 470-471; 628 NW2d 515 (2001). Plaintiff was a maintenance supervisor who worked for defendant for nearly 35 years. The parties apparently do not dispute that plaintiff was a member of a protected class and that he was qualified for his position.

Because plaintiff resigned, he alleges that his “adverse employment action” was a constructive discharge. “[C]onstructive discharge is a defense against the argument that no suit should lie in a specific case because the plaintiff left the job voluntarily.” *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 487; 516 NW2d 102 (1994). If constructive discharge is established, the employee is treated as if he or she had actually been discharged. *Jacobson v Parda Fed Credit Union*, 457 Mich 318, 328; 577 NW2d 881 (1998). It “is established where ‘an employer deliberately makes an employee’s working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee’s shoes would feel compelled to resign.’” *Vagts, supra* at 487, quoting *Mourad v Automobile Club Ins Ass’n*, 186 Mich App 715, 721; 465 NW2d 395 (1991). This demands an objective standard of reasonableness. *Jacobson, supra* at 328.

Plaintiff argues that he was effectively harassed into retirement. Taking plaintiff’s allegations as true, he presented evidence that defendant had a policy to promote younger engineers. Because plaintiff was not an engineer, this policy would be irrelevant even if true. He presented evidence that defendant locked an electric cart so that it could not be used while plaintiff was working on the midnight shift, but he fails to provide any evidence beyond his own suspicions that this was “just to harass him.” He also presented evidence that his supervisors and coworkers made derogatory remarks about his age, referring to him as “old man,” asking “how’s your sugar?” and “how’s your blood pressure?,” and suggesting that he was senile.

Analogizing to the context of a sexual harassment claim, the question is “whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff’s employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment.” *Radtke v Everett*, 442 Mich 368, 394; 501 NW2d 155 (1993). These circumstances “may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Quinto v Cross and Peters Co*, 451 Mich 358, 370 n 9; 547 NW2d 314 (1996), quoting *Harris v Forklift Systems, Inc*, 510 US 17, 22-23; 114 S Ct 367; 126 L Ed 2d 295 (1993). We are unpersuaded that plaintiff has demonstrated constructive discharge due to age-based harassment.

In this case, plaintiff was not fired, demoted, or denied a promotion. He admitted that he never applied for a promotion with defendant. None of the remarks were physically threatening. Most significantly, plaintiff admittedly left his job after a disagreement with his supervisor and never returned. Plaintiff thereafter expressed feelings of anger to a doctor, who apparently contacted defendant because of concerns that plaintiff might be a threat to his supervisor. Plaintiff took a leave of absence, and defendant sent him a letter explaining the procedure for returning to work, but plaintiff never subsequently contacted anyone with defendant, and never explored the possibility of working in a different capacity or different plant. Plaintiff testified that he decided to retire because everyone on the workforce, including people under his supervision, had heard a rumor that he had threatened to kill his supervisor. Although plaintiff testified that he was tired of “harassment” because of his age, he explained that he decided not to return to work because he was humiliated by the rumors about his conduct and no longer believed he could be an effective maintenance supervisor. Plaintiff did not provide evidence that

he felt compelled to resign because of defendant's deliberate behavior, but rather attributed his retirement to the embarrassment over the rumors involving his own alleged behavior.

Because the evidence failed to establish that plaintiff's allegedly constructive discharge was on account of discrimination based on his age, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Alton T. Davis

/s/ William C. Whitbeck